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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GIL ALFREDO HERNANDEZ-SALAS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-74082

Agency No. A98-212-112

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted May 20, 2008<sup>\*\*</sup>

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Gil Alfredo Hernandez-Salas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision pretermining his application for cancellation of

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the agency's continuous physical presence determination for substantial evidence. *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We grant the petition for review and remand.

Substantial evidence does not support the agency's determination that Hernandez-Salas' continuous physical presence was broken based on an Apprehension History form, where the form is unsigned and does not show that Hernandez-Salas was informed of the terms of his departure or that he accepted them voluntarily or knowingly. *See id.* at 619 (administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the record shows the alien was informed of the terms of departure and knowingly and voluntarily accepted them).

We therefore grant the petition for review and remand for further proceedings. *INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam).

**PETITION FOR REVIEW GRANTED; REMANDED.**